

BOARD OF PESTICIDES CONTROL

June 17, 2005

Board Rooms, Senator Inn & Spa
284 Western Avenue, Augusta

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the meeting to order at 9:35 A.M. Other members in attendance included Berry, Humphreys, Jemison and Simonds. Walton arrived at 10:15 A.M. and Bradstreet was unable to attend. Assistant Attorney General Lucinda White was also present.

1. Introduction of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the April 15, 2005 Board Meeting

Action Needed: Amend and/or Approve.

- ☒ Berry/Jemison: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

Absent: Walton

3. Appearance by Two Bowdoinham Neighbors Requesting Adoption of a Location Verification Regulation for Lawn Care Applications

Paul Guerette of 34 Bay Road and Susan Drucker of 38 Bay Road (Rte. 24) in Bowdoinham have requested an opportunity to address the Board and ask that a location verification regulation be adopted to prevent lawn care applicators from making treatments to properties where the owners do not desire service. These neighbors who are both organic gardeners complained on May 3, 2005 that an employee of TruGreen ChemLawn had treated and posted their properties that morning and left invoices for treatments of a fertilizer and two herbicides. The Board's staff initiated an investigation and confirmed that the applicator was supposed to make the treatments approximately seven miles away to two homes at 34 and 38 Middlesex Road (Rte. (24) in Topsham. The staff has advised Guerette and Drucker that it will likely not conclude the enforcement phase of its investigation for several months. The two neighbors believe it is important for the Board to take action much sooner to prevent similar incidents from happening to other residents. Their recommendations include requiring the applicator to take one or more of the following steps: (1) meet with the customer at the time of the treatment, (2) send out a card in advance that the customer would post on the door for the applicator to see before making a treatment or (3) record the customer's electric meter number in advance and then check for its presence before making the application.

Presentation By: Paul Guerette and Susan Drucker
34 Bay Road 38 Bay Road

Action Needed: Discussion and determination if the Board wishes to begin developing an interim policy or regulation to address applications to the wrong property.

- ☑ Guerette initiated the discussion by pointing out he was not home at the time and only realized his property had been treated after finding an invoice on his door. He stated that as an organic gardener he normally uses his lawn clippings in his compost but would not be able to do so this year due to the presence of herbicide residues. He urged the Board to adopt safeguards such as requiring applicators to mark their customer's property and carry a photograph of the home to prevent similar accidents in the future. Drucker expressed concerns that her cat was outdoors at the time of the treatment and that the applicator had failed to pick up several tennis balls she throws for her dog. She too requested that the Board adopt safeguards for the future and noted the situation would have been much worse if sensitive individuals lived at her location. She recommended that applicators be required to send a card in advance for the resident to post on the home before the applicator could treat. In addition, a written contract should be required and contain a provision holding the customer who failed to post the card financially responsible for the requested service even if it could not be performed that day.

Curt Rose from TruGreen ChemLawn introduced himself and stated his company was embarrassed about the mistaken treatment. He explained the applicator had just moved up from Georgia, was not very familiar with the area, turned the wrong way at an intersection and didn't realize he had passed the Topsham/Bowdoinham town line. He stated the company was definitely trying to prevent similar incidents by using new GPS computer generated maps. He indicated they could not rely on customers to post cards or other markers because many frequently forget and others are only at summer properties on weekends. Joe Castanera from their regional office explained it would also be difficult to get the photos onto computer generated invoices. He also admitted that in 30 percent of the cases where the wrong property is treated the applicator gets to the right house but treats the neighbor's property. In response to a question, he clarified that the applicators currently do not have GPS units in their vehicles.

Gary Fish pointed out that the Board's staff had spent the last two years recommending a low technology solution of recording the number of the electricity meter in advance, and then checking for its presence before making treatments. Simonds remarked a positive identification was clearly needed, and Eckert observed the recent number of cases where the wrong property had been treated demonstrates the need for the Board to solve the problem. Humphreys expressed her belief that it was irresponsible for the company to send out a new driver from Georgia and that they should be more than embarrassed.

Rose apologized to Guerette and Drucker and informed the Board it was his intention to be perfect in their operations. He stated he would begin sending out letters to all his customers asking for their electric meter numbers. John Bennett of Turf Care in Augusta advised that his company had used the meter numbers successfully for the past two years and now has the capability to print the meter numbers on their invoices. He also agreed that it is very difficult to get customers to take requested actions in advance.

Simonds indicated he still felt someone from the company should visit each site in advance of the treatment dates. Eckert asked how the Board wished to proceed and Batteese suggested that they might wish to adopt an interim compliance policy until a rule could be developed and adopted.

Simonds/Jemison: Motion made and seconded to direct staff to draft a positive and unique identification policy regarding outdoor applications to residential properties.

In Favor: Unanimous

Absent: Walton

Eckert asked the staff to share the draft policy with Guerette and Drucker prior to the next meeting.

4. Adoption of Amendments to Chapters 27 and 31

Public hearings were held on several proposed amendments to these two chapters on March 18 when one person spoke regarding Chapter 27 and four people spoke regarding Chapter 31. The comment period closed on April 4th with one written comment addressing Chapter 27 and three comments for Chapter 31. The Board reviewed these comments at its April 15th meeting along with staff recommended revisions that incorporated several of the comments. The members then directed the staff to prepare the revised amendments for adoption at the next meeting.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the members are ready to adopt the amended rules and supporting basis statements.

- ☒ Batteese reminded the members that at their April meeting they had reviewed all the changes made in response to comments, and had directed the staff to prepare the rules and basis statements for adoption at the next meeting.

Berry/Walton: Motion made and seconded to adopt the amendments to both Chapters 27 and 31 and their supporting basis statements.

In Favor: Unanimous

5. Review of Planning Session Topics and Prioritization of Discretionary Tasks for Future Action

On June 3, 2005 the Board spent a day with staff discussing a wide range of issues including a pending budget deficit, redrafting of a new proposed Chapter 26, establishing criteria for medical information to be submitted in an application for a Chapter 60 critical pesticide control area designation, reviewing concerns about aerial application and establishing buffer zones to protect marine organisms from Brown Tail Moth spraying. The staff has prepared a list of the topics that may be addressed rather easily and another

that will require considerable attention by the Board.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Determination that the lists are correct and prioritization of discretionary tasks that will take considerable time to accomplish.

- ☒ Batteese pointed out the top list of must do items was quite lengthy and that there had only been two discretionary topics until he included three remaining items from last year's list. There was agreement the lists were correct and he should send out the ballot for all members to vote. Humphreys suggested that the first step in addressing aerial applicator issues should be to call a meeting with this small group of licensees.

6. Review of Board Policy Establishing the Environmental Risk Advisory Committee

The Board last amended its policy establishing its Environmental Risk Advisory Committee (ERAC) in September 2000. At that time it expanded the number of ad hoc members to be chosen with specific expertise in the subject in question from two to six. The higher number was deemed more appropriate as the ERAC completed a review of the potential effects of pesticides on Atlantic Salmon and prepared to review insecticides that might be used should an outbreak of West Nile Virus be detected in Maine. The staff will point out that at least one of the standing members is no longer available to serve and that a new set of ad hoc members will soon be needed to meet a legislative directive from the Joint Standing Committee on Agriculture, Conservation and Forestry. That committee has recommended that LD 1657 An Act to Minimize the Risk to Maine's Marine Waters and Organisms Posed by the Application of Pesticides be carried over to the next session to allow time for the Board to evaluate ongoing studies of the potential for pesticides to cause adverse effects on lobsters.

Presentation By: Lebelle R. Hicks
Pesticides Toxicologist

Action Needed: Discussion and decision on how the Board would like to recruit new members for this specific issue.

- ☒ Hicks called the member's attention to her new handout listing potential candidates for the two openings on the standing committee and up to six ad hoc members. She also noted she had included mission statements for both the Lobster Institute and Lobster Conservancy so the members would be aware of their goals. Simonds indicated his preference for focusing on an individual's technical expertise rather than their political agenda. Berry suggested checking with both the Bigelow Laboratory and the Mt. Desert Laboratory Institute for staff with appropriate credentials. He also volunteered to serve as an ad hoc member with expertise in pesticide drift issues. Walton emphasized that Humphreys had done a great job as Chair of the West Nile Virus ERAC and should remain as Chair. Humphreys agreed to continue to serve and there was agreement Hicks should solicit additional CVs for review at the next meeting.

7. Consideration of Staff Negotiated Consent Agreement with NewLand Nursery and Landscaping, Inc. of Ellsworth

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves an unlicensed lawn and landscape maintenance company that subcontracted with Scotts Lawn Services of Hermon to make pesticide applications for customers who desired such treatments. In March 2004, a customer who had just signed up for their comprehensive property maintenance program notified NewLand Nursery that she did not wish to receive any pesticide applications. She later complained to the Board when Scotts treated the turf at her home on July 1, 2004. These actions constitute a violation of the Board's statute prohibiting the application of pesticides in a careless, negligent or faulty manner.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained this was a difficult case since there was a question about what services the customer initially desired. In addition there was no written contract or other notes between NewLand and Scotts. Eckert recommended the staff send a letter to Scotts, and Simonds concurred noting they need confirmation that they are authorized to perform specific treatments.

Simonds/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Maple Lane Golf Club of Livermore

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves an August 3, 2004 application of pesticides to the turf at the Maple Lane Golf Club that is considered a place open to use by the public. At the time of the application, no company employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statute that requires a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings reported this case involved a small, nine-hole course that used to have a person licensed but when the employee resigned the owner started making the applications.

Berry/Simonds: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Ballard's Custom Spraying of St. Albans

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves a commercial applicator who treats agricultural crops with products that bear label language requiring conformance with the federal Worker Protection Standard (WPS). During a routine inspection on October 7, 2003, the Board's inspector reviewed all the requirements of the WPS including the need to provide safety training to all pesticide handlers. A follow up inspection on June 16, 2004 revealed that the applicator had still failed to provide the required handler safety training. This action constitutes a violation of the Code of Federal Regulations.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings noted this applicator only treats forage corn and only has one employee. However, he had failed to provide the worker training in the spring after being inspected and informed that he must do so the previous fall.

Berry/Jemison: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

10. Other old or New Business

a. Legislative Update – R. Batteese

- ☒ Batteese distributed an excerpt from LD 1691 and explained it still included a provision taking Board funds from the public information officer's vacant position to pay for one half of a position in Market and Production Development. He pointed out Department officials had still not indicated how they would deal with this issue the Legislature would likely adopt as part of a Part III Budget by the weekend. Walton compared the situation to taking too many peelings off the onion and Simonds expressed frustration that the money was being pilfered from the Board. Batteese advised that either removing non Board positions from the Pesticide Control Fund or finding new revenue should be a major issue to address

in the upcoming Performance Evaluation Report due in November. He asked if the members wished to have Jim Dill at the next meeting to describe his plan for legislation to collect a surcharge on all homeowner pesticides at the point of sale. It was agreed Dill should be invited so the members could explore all options including a potential increase in the pesticide product registration fee.

- b. Variance Permit Granted to Maine Department of Transportation for 2005 Woody Brush and Roadside Grass Control Programs – R. Batteese

- ☒ Batteese noted this was an informational item only since there had been no problems with the MDOT program in 2004.

- c. Maine Public Service Company's Vegetation Management Program for 2005 – R. Batteese

- ☒ Batteese advised this was also an informational item since MPS had completed mapping the sensitive areas surrounding their substations and no longer needed a variance for this work.

- d. Other ??????

- ☒ Humphreys asked for an update on the letter from M.S. Lavoie and the staff's response it was not going to rescind the warning letter it had issued to this pilot. Jennings outlined the difficulties the staff faced in collecting the samples and explained the reasons for only issuing a warning letter. Batteese advised that the staff would be willing to reopen the case and invite lobstermen who witnessed the application to Clapboard Island to appear at a future meeting if Lavoie wished.

11. Schedule and Location of Future Meetings

- a. The Board tentatively scheduled the next meeting for Friday, July 29, 2005.

- ☒ The Board scheduled the next meeting for Friday, July 29, 2005 in the Augusta/Waterville area

- b. Location and date for the following meeting.

- ☒ The members did not set a date for the following meeting but expressed a preference for skipping August and having a meeting early in September.

12. Adjourn

- ☒ A motion to adjourn was accepted at 11:50 A.M.

Robert I. Batteese, Jr.
Director